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GREAT FALLS

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

PATRICK E. DUFFY, CLERK

BY

DEPUTY CLERK

GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Cause No. CR 09-42-GF-SEH

CV 12-75-GF-SEH

Plaintiff/Respondent,

vs.

ORDER DISMISSING MOTION AND  
DENYING CERTIFICATE OF  
APPEALABILITY

BEVERLY PAULINE  
IRON PIPE-BEGAY,

Defendant/Movant.

On September 10, 2012, Defendant Beverly Pauline Iron Pipe-Begay, acting through "substituted counsel" Thane Johnson, filed a motion to vacate, set aside, or correct her sentence under 28 U.S.C. § 2255. Represented by Assistant Federal Defender R. Hank Branom, Iron Pipe-Begay currently has an appeal pending before the Ninth Circuit Court of Appeals. Notice of Appeal (doc. 61); *United States v. Iron Pipe-Begay*, No. 12-30266 (9th Cir. filed Aug. 24, 2012).

District courts do not consider § 2255 motions while a direct appeal is pending. *Feldman v. Henman*, 815 F.2d 1318, 1320 (9th Cir. 1987) (as amended); *United*

*States v. Deeb*, 944 F.2d 545, 548 (9th Cir. 1991); Rule 5, Rules Governing Section 2255 Proceedings for the United States District Courts, advisory committee's note (quoting *Womack v. United States*, 395 F.2d 630, 631 (D.C. Cir. 1968)). This is well-settled law. A certificate of appealability is not warranted. *Lozada v. Deeds*, 498 U.S. 430, 432 (1991) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

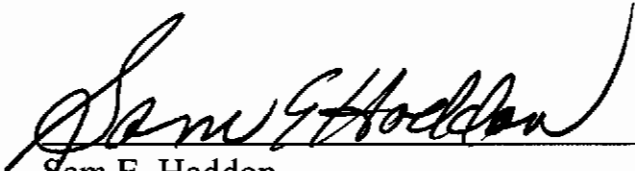
Accordingly, IT IS HEREBY ORDERED:

1. Iron Pipe-Begay's motion to vacate, set aside, or correct the sentence (doc. 67) is DISMISSED without prejudice to refile on completion of the direct appeal process.

2. A certificate of appealability is DENIED.

3. The Clerk of Court shall enter a judgment of dismissal in Cause No. CV 12-75-GF-SEH.

DATED this 9<sup>th</sup> day of October, 2012.

  
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Sam E. Haddon  
United States District Court